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No. 86-1205

In The

Supreme Court of the United States

October Term, 1986

ISADORA KARASH as Guardian ad Litem for Michael E. Lowe, a minor,

Petitioner,

v.

COUNTY OF SAN DIEGO,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division One

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To The Honorable William H. Rehnquist, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Respondent COUNTY OF SAN DIEGO, a public entity and a political subdivision of the State of California, opposes the petition for a Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division One, and files this Brief setting forth the reasons for its opposition.[1]

[1]Rule 28.1 of the Rules of the Supreme Court is not applicable.

SUMMARY OF ARGUMENT

Petitioner bases her application to this Honorable Court for a Writ of Certiorari on the alleged unconstitutionality of two California statutes. Petitioner claims that application of the provisions of California Welfare and Institutions Code section 5154[2] and California Government Code section 856[3] violate petitioner's rights under the

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[2]California Welfare and Institutions Code section 5154 at the time of the occurrence provided:

> "The professional person in charge of the facility providing 72-hour treatment and evaluation, his designee, and the peace officer responsible for the detainment of the person shall not be held civilly or criminally liable for any action by a person released at or before the end of 72 hours pursuant to this article."

[3]California Government Code section 856 at all times provided:

> "(a) Neither a public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining in accordance with any applicable enactment:
>
> "(1) Whether to confine a person for mental illness or addiction.
>
> "(2) The terms and conditions of confinement for mental illness or addiction.
>
> "(3) Whether to parole, grant a leave of absence to, or release a person confined for mental illness or addiction.
>
> "(b) A public employee is not liable for carrying out with due care a determination described in subdivision (a).
>
> "(c) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in carrying out or failing to carry out:
>
> "(1) A determination to confine or not to confine a person for mental illness or addiction.

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Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Petitioner claims these statutes unfairly immunize the County of San Diego from liability for the death of petitioner's decedent at the hands of a patient released following involuntary commitment to respondent's mental health facility. Petitioner contends the statutes preclude any recovery from respondent only because the patient's commitment for treatment was involuntary, when the immunity would not have been available had the patient been treated on a voluntary basis.

However, application of the statutes only to involuntarily committed patients is neither unreasonable nor arbitrary. There is no definite period of commitment for voluntary patients, who may terminate treatment at any time. The release of an involuntary patient pursuant to the exercise of discretion of the treating physician before the end of the involuntary commitment period would otherwise on the proper facts, result in liability to victims of the released mental health patient. The statutory immunities provided to public entities and their employees for determinations of this nature bear a rational relationship to proper legislative objectives, i.e., to end the inappropriate, indefinite and involuntary commitment of mentally disordered persons.

Petitioner has failed to set forth the reasons why review on the writ should be granted, according to the con-

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"(2) The terms or conditions of confinement of a person for mental illness or addiction.

"(3) A determination to parole, grant a leave of absence to, or release a person confined for mental illness or addiction."

siderations provided at Rule 17(1)(c) of the Rules of the Supreme Court. This Court has already considered and rejected a Fourteenth Amendment challenge to a similar California statute immunizing the government from liability for decisions to release prisoners on parole.

For these reasons this Court should deny the Petition for a Writ of Certiorari to issue to the state court of appeal.

———o———

ARGUMENT

This Court has applied a rational relationship test to each previous equal protection challenge involving involuntary commitment classifications. (*Jackson v. Indiana,* 406 U.S. 715 (1972); *Humphrey v. Cady,* 405 U.S. 504 (1972); *Baxstrom v. Herold,* 383 U.S. 107 (1966); see also *Jones v. United States,* 463 U.S. 354, 362, fn. 10 (1983).

Moreover, great latitude is given to state legislatures in determining classifications involving social and economic legislation. (*Levy v. Louisiana,* 391 U.S. 68 (1968), citing *Williamson v. Lee Optical Co.,* 348 U.S. 483, 487-489 (1954).) Unless wholly arbitrary or irrational, the State of California, in enacting legislation controlling governmental tort liability, has broad powers paramount to any discernible federal interest. (*Martinez v. California,* 444 U.S. 277, 282 (1980).) The statutes challenged by petitioner herein deal not only with services for the most basic of social needs but also control the government's tort liability in the providing of such services. The legislative wisdom behind the immunities is therefore entitled to great deference.

Unlike voluntary patients, involuntarily committed patients cannot simply walk away from the mental health facility. An exercise of discretion by the treating physician is necessary for such patients to leave a facility before the end of the 72-hour commitment. If that patient, following an early release from a mental health facility, were to cause injury to another, the facility and/or physician making the determination to release the patient could be exposed to liability. Absent the legislative grant of immunity to the persons and facilities exercising such discretion, no involuntarily committed patient would ever be released before the end of the definite period of commitment, regardless of how unnecessary such continued commitment might be. Such unjustified involuntary confinement would be directly contrary to the expressed legislative intent to "end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons."[4] Special problems of diagnosis and treatment in the field of mental illness, combined with the problems of excessive patient load in public mental institutions that must take all patients committed to them, necessitate legislation to immunize public entities and employees from liability for determinations

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[4]California Welfare and Institutions Code section 5001 provides in part:

"The provisions of this part shall be construed to promote the legislative intent as follows:

"(a) To end the inappropriate, indefinite, and involuntary commitment of mental disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to eliminate legal disabilities;

"(b) To provide prompt evaluation and treatment of persons with serious mental disorders or impaired by chronic alcoholism."

made in accordance with the policies and purposes of civilized and humane treatment of mentally disordered persons. (See *County of Los Angeles v. Superior Court,* 62 Cal.2d 839, 846 (1965).) The legislative wisdom of immunizing public employees and entities from liability under such conditions deserves great deference.

Petitioner has failed to specify why this Court should grant review on the petition, according to Rule 17(1)(c) of the Rules of the Supreme Court. No important question of federal law remains unresolved and no federal question has been decided in a way in conflict with applicable decisions of this Court. In fact, this Court recently rejected a similar challenge to a similar statute. In *Martinez v. State of California, supra,* 444 U.S. 277, this Court agreed that a statute immunizing the State of California from liability for decisions to release prisoners on parole did not violate the due process clause of the Fourteenth Amendment. That case arose out of the murder of a 15-year old girl by a paroled mentally disordered sex offender. The girl's parents sued the State of California claiming that the state officials responsible for the parole-release decision should be liable in damages for the death of their daughter. The California Supreme Court affirmed an order sustaining the State's demurrer to the complaint, based on the provisions of California Government Code section 845.8(a), which immunized the State of California for such a determination.[5]

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[5]California Government Code section 845.8(a) provided:

"Neither a public entity nor a public employee is liable for:

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As against the Fourteenth Amendment due process challenge, this Court affirmed, stating:

> "But even if one characterizes the immunity defense as a statutory deprivation, it would remain true that the State's interest in fashioning its own rules of tort law is paramount to any discernable federal interest, except perhaps an interest in protecting the individual citizen from state action that is wholly arbitrary or irrational.
>
> "We have no difficulty in accepting California's conclusion that there 'is a rational relationship between the State's purposes and the statute.' (Footnote omitted.) In fashioning state policy in a 'practical and troublesome area' like this, . . . the California Legislature could reasonably conclude that judicial review of a parole officer's decisions 'would inevitably inhibit the exercise of discretion,' (citation omitted). That inhibiting effect could impair the State's ability to implement a parole program designed to promote rehabilitation of inmates as well as security within prison walls by holding out a promise of potential rewards. Whether one agrees or disagrees with California's decision to provide absolute immunity for parole officials in a case of this kind, one cannot deny that it rationally furthers a policy that reasonable lawmakers may favor. As federal judges, we have no authority to pass judgment on the wisdom of the underlying policy determination. We therefore find no merit in the contention that the State's immunity statute is unconstitutional when applied to defeat a tort claim arising under state law." (*Martinez v. State of California, supra,* 444 U.S. 277, 282-283.)

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(a) Any injury resulting from determining whether to parole or release a prisoner or from determining the terms and conditions of his parole or release or from determining whether to revoke his parole or release."

There appears no basis here for granting review of a similar statutory scheme that equally furthers policies considered and favored by reasonable lawmakers.

—o—

PETITIONER'S AUTHORITIES DISTINGUISHED

Petitioner relies on the case of *Levy v. Louisiana,* 391 U.S. 68 (1968). In that case this Court ruled that the classification of illegitimate children precluded by statute from recovery for the wrongful death of their natural mother constituted invidious discrimination in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

However, the basis for the ruling in *Levy, supra,* was the lack of any rational relationship between the classification of illegitimate children and a reasonable governmental objective. As this Court stated, "Legitimacy or illegitimacy of birth has no relation to the nature of the wrong allegedly inflicted on the mother." (*Levy v. Louisiana, supra,* 391 U.S. at 72.) The difference between the *Levy* case, *supra,* and this case is the presence of a rational relationship between the immunities provided at Welfare and Institutions Code section 5154 and Government Code section 856 and one or more legitimate governmental objectives.

Petitioner also refers extensively to the decision of the California Supreme Court in *Tarasoff v. Regents of University of California,* 17 Cal.3d 425 (1976). Petitioner obviously believes the *Tarasoff* principles should have been applied here and support liability as to the County of

San Diego in this case. However, petitioner ignores the fact that the California Supreme Court applied the same provision of the Welfare and Institutions Code that petitioner here challenges as violative of the Equal Protection Clause of the Fourteenth Amendment. The California Supreme Court ruled in *Tarasoff, supra,* that the campus security officers who detained and then released the mental patient were immune from liability under Welfare and Institutions Code section 5154. (*Tarasoff v. Regents of University of California, supra,* 17 Cal.3d 425 at 449-450.)

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CONCLUSION

This Petition for Writ of Certiorari raises neither an important question of federal law nor identifies a decision by the state court of appeal that has been decided in conflict with applicable decisions of this Court. This Court's earlier decisions are clearly supportive of the broad powers of a state government to control its own governmental tort liability. The purposes underlying the immunity provisions of the challenged statutes are well supported and rationally related to legitimate governmental interests as already decided by this Court in *Martinez v. State of California, supra,* 444 U.S. 277.

For the reasons discussed herein this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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DATED: March 11, 1987

APPENDIX "1"[6]

Although I have concurred in the lead opinion, I write separately to specifically address one portion of Justice Staniforth's thoughtful dissent.

The dissent posit of an equal protection specter misses the analytical boat. The voluntariness or involuntariness of the commitment does meaningfully differentiate as to the legal issue in this case. The dissent suggests the affected classes are those victims who are damaged by acts of the persons released, one being allowed to sue the releasing authority where the commitment was voluntary, and another barred from doing so where the commitment was involuntary. However, the fact is that releasing authorities have no control over voluntarily-committed patients. Those persons may sign out at will. There is no "release" which is subject to the discretionary control of the housing facility. The involuntarily committed may only be released in accordance with statutory guidelines, one of which is the discretion of the staff. The departure of a voluntary patient imposed no liability on staff for an improvident release while, in the absence of statutory immunity, liability could be established on proper facts where the patient is subject to nonconsensual confinement. Considered in light of the legal authorities in the two situations, the relevant legal classes are distinct and different.

WORK, J.

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[6]Petitioner's version of the decision issued by the Court of Appeal of the State of California, Fourth Appellate District, Division One, attached as Appendix A to her petition, omitted the concurring opinion discussing the lack of an equal protection argument available to petitioner.